HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No.6526 of 2007

Between:

B. Koteswara Rao …Petitioner

And

The Director General of Works,
Central PWD, New Delhi and others. …Respondents

:: O R D E R ::

Counsel for the petitioner : Sri M.R.L. Narasimha Rao

24th April, 2007

Per G.S. Singhvi, C.J.

This petition is directed against order dated 17-11-2006, vide which the Central Administrative Tribunal, Hyderabad Bench (for short, 'the Tribunal') declined the petitioner's prayer for issue a direction to the official respondents to promote him as Office Superintendent Grade-II with effect from 2-12-2003.

The petitioner was initially appointed as Lower Division Clerk in Central Public Works Department on 7-6-1985. He was promoted as Upper Division Clerk on 26-7-1988 and as Head Clerk on 28-5-1994. He claims to have become eligible for promotion as Officer Superintendent Grade-II with effect from 1-1-2000 i.e. the date on which he completed five years service in the cadre of Head Clerks. He

filed an application under Section 19 of the Administrative Tribunals Act, 1985 (for short, 'the Act') in March, 2006 for issue of a direction to the official respondents to promote him as Office Superintendent Grade-II with effect from 1-1-2000 with all unconstitutional benefits. However, during the course of hearing, learned counsel appearing for the petitioner restricted his claim for promotion as Office Superintendent Grade-II only with effect from
2-12-2003.

The Tribunal noted that the petitioner's case was considered in the meeting of the Departmental Promotion Committee on 17-10-2003, but he was not found suitable and held that the direction for his promotion as Office Superintendent Grade-II with retrospective effect cannot be issued. The Tribunal also examined the record including the ACRs of the petitioner and negatived his plea that the concerned authority had arbitrarily downgraded his confidential reports resulting in rejection of his candidature.

Sri M.R.L. Narasimha Rao argued that the petitioner was entitled to be considered for promotion with effect from 1-1-2000 i.e. the date on which he acquired eligibility for the post of Office Superintendent Grade-II and the Tribunal committed a jurisdictional error by not ordering his promotion with retrospective effect.

In our opinion, there is no merit in the argument of the learned counsel and the writ petition is liable to be dismissed summarily. The petitioner has not produced any material before the Court to show that the recommendation made by the Departmental Promotion Committee about his unfitness for promotion to the post of Office Superintendent Grade-II is vitiated by an error of law. Therefore, the finding recorded by the Tribunal that he was not entitled to be promoted with retrospective effect cannot be faulted.

We are further of the view that the original application filed by the petitioner was liable to be dismissed only on the ground that the petitioner had neither questioned the legality of order dated 2-12-2003 vide which respondent No.5 was promoted as Office Superintendent Grade-II nor he pleaded that an additional vacancy in the cadre of Office Superintendent Grade-II was available on 2-12-2003. In the absence of such pleadings and prayer, the Tribunal could not have passed an order and indirectly nullified the promotion of respondent No.5, who was promoted as Office Superintendent Grade-II vide order dated 2-12-2003 or issued a direction for the petitioner's promotion as Office Superintendent Grade-II.

Before concluding, we may mention that if the petitioner had challenged the promotion of respondent No.5 in the original application filed in 2006, the same would have been dismissed as barred by time in view of the provisions contained in Section 21(1) of the Act.

For the reasons stated above, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP.No.8347 of 2007 filed by the petitioner for early hearing of the petition is disposed of as infructuous.

G.S. SINGHVI, C.J.

24th April, 2007

C.V. NAGARJUNA REDDY, J.

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